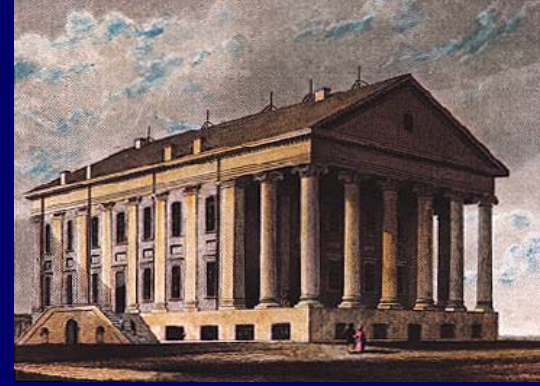


# Virginia State Crime Commission

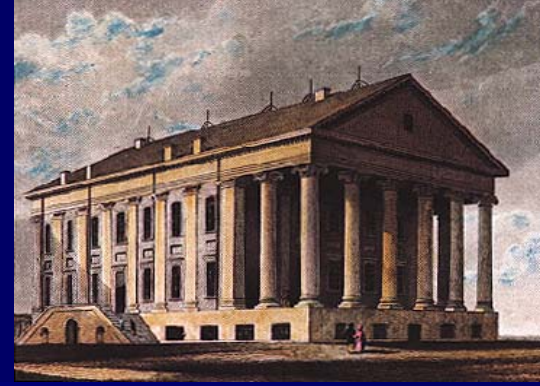
Overview & Recommendations of the  
Illegal Immigration Task Force

January 4, 2007

# Agenda

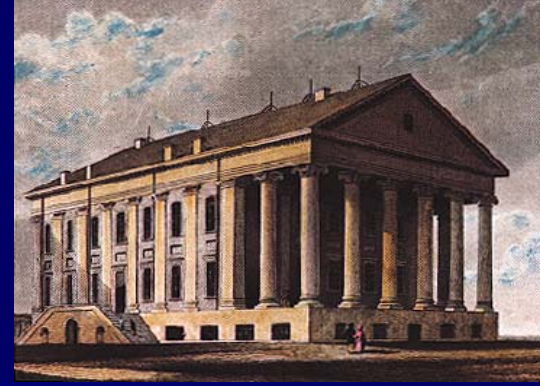


- Task Force Overview
- The Role of Federal Preemption
- Task Force Recommendations
- Final Report & Implementation of Final Recommendations



# Task Force Overview

# Task Force Formation



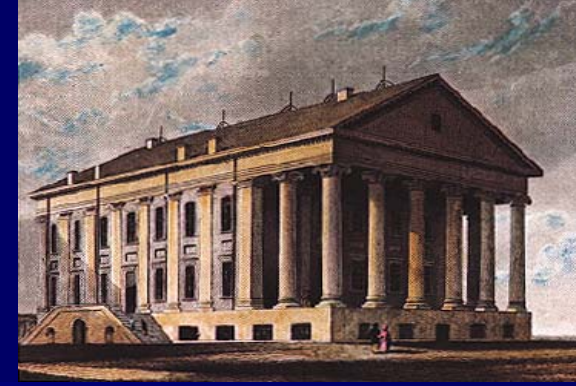
- Announced April 2, 2007.
  - “Despite the scores of bills brought before the General Assembly in recent years that claim to deal with this issue, very little is known about the scope of the problem and how it is affecting public safety and our criminal justice system.”
  - “The [Task Force] will endeavor to understand the problem in an effort to formulate measures that are both legally sound and effective.”

# Task Force Mission Statement



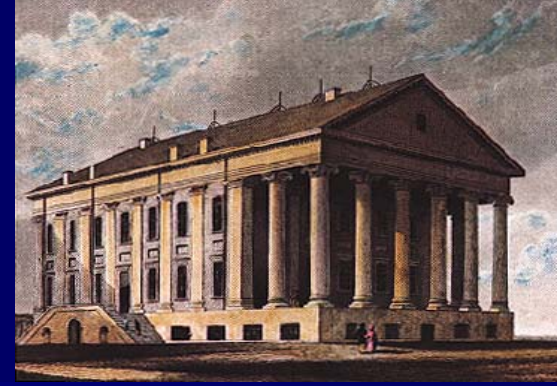
- Reflects the statutory authority of the Crime Commission.
- Limited to the impact of illegal immigration on VA's criminal justice system.
- Focus on:
  - Crime by and against illegal immigrants.
  - Impact on the criminal justice system.
  - What measures may effectively be taken.

# Task Force Membership



- 21 voting members
  - Legislative (7)
  - Law enforcement / corrections (6)
  - Civic and community organizations (5)
  - Faith-based (1)
  - Attorney General (1)
  - Commonwealth's Attorney (1)
- 2 non-voting citizen advocates
- 2 legal advisers
- Congressional liaison

# Task Force Meetings



## Five Meetings

May 15

July 24

August 28

September 25

October 16



# Task Force Presentations



- U.S. Immigration & Customs Enforcement:
  - Initiatives of U.S. Immigration & Customs Enforcement
  - I.C.E.'s Law Enforcement Support Center database
  - Document and benefit fraud task forces
  - I.C.E.'s Incarcerated Criminal Alien Program



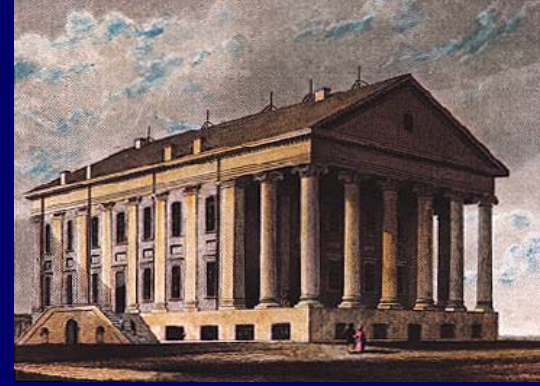
# Task Force Presentations



## ■ Law:

- Overview of federal immigration law as it relates to public safety – *Office of the Principal Legal Adviser, I.C.E.*
- Virginia statutes pertaining to illegal immigration / recent legislation – *Crime Commission Staff*
- Federal immigration law and preemption – *Task Force Legal Adviser*
- Preemption analysis of legislation in Virginia and other states – *Crime Commission Staff*

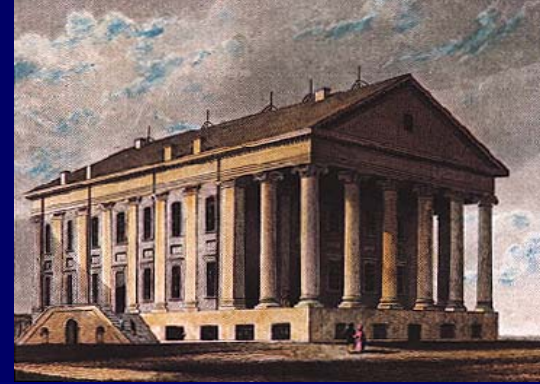
# Task Force Presentations



## ■ Law Enforcement:

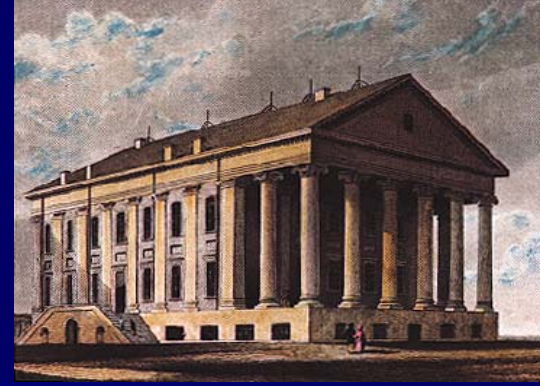
- Mecklenburg County Sheriff's Office, N.C.;  
experience w/ I.C.E. and 287(g)
- Local law enforcement and illegal immigration –  
*International Association of Chiefs of Police*
- Bridging the gap between law enforcement and  
illegal immigrants:
  - *National Latino Peace Officers Association*
  - *Norfolk Police Department*
  - *Richmond Police Department*

# Task Force Presentations



- Illegal Immigrants in VA Jails & Prisons:
  - Virginia Sheriff's Association Survey – *Crime Commission Staff*
    - 68% (43 of 63 responding agencies) responded that they inquire into the immigration status of persons in custody.
    - The same number of offices (43) responded that they had contacted I.C.E. to inform them of an illegal immigrant in custody.
    - Opinions of responses received by I.C.E. varied.
      - 10 offices gave generally favorable reviews; 14 gave generally negative reviews; 6 offices complained I.C.E. would only pick up felons; and 4 offices complained I.C.E. would only pick up if there was a large number of illegal immigrants at one time.

# Task Force Presentations



## ■ Illegal Immigrants in VA Jails & Prisons (cont.):

– Data analysis of “proxy” illegal immigrants in VA jails and prisons –  
*Crime Commission Staff*

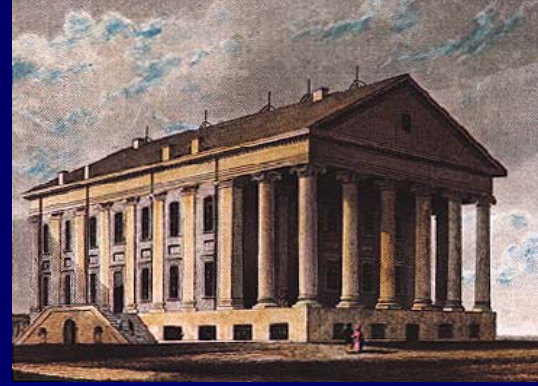
- Based on available data compiled by LIDS, it is estimated that 6% (13,735) of inmates in jail at some point in FY07 met the criteria for “proxy” illegal immigrants.
- Based on available data compiled by the DOC, it is estimated that “proxy” illegal immigrants comprise approximately 2% of the VA prison population.

# Task Force Presentations



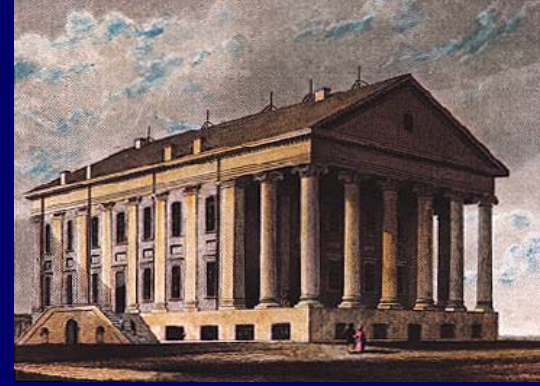
- Illegal Immigrants as Criminals, Victims & Witnesses:
  - Nexus between illegal immigrants and gangs – *Center for Immigration Studies*
  - Illegal immigrants as victims and witnesses – *Virginia Center for Farm and Immigrant Workers*
  - Illegal immigrants as victims of employment abuse – *Volunteer with the Virginia Hispanic Chamber of Commerce, Legal Clinic*
  - Illegal immigrants as victims of domestic violence, sexual assault, and human trafficking – *Tahirih Justice Center*





# The Role of Federal Preemption

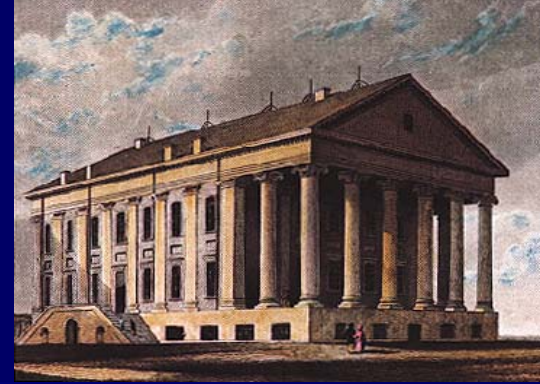
# Federal Preemption



- Basic categories of immigration offenses under federal law:
  - Aiding illegal immigrants;
  - Illegal entrance and departure;
  - Immigration document fraud; and,
  - Employment.



# Federal Preemption



## Aiding Illegal Immigrants

- It is a criminal violation of immigration law to assist illegal aliens entering the country by:
  - Transporting an illegal alien into the country;
  - Providing a person with entrance documents that are false;
  - Inducing an alien to illegally enter the country;
  - Aiding an alien inadmissible due to a felony conviction or health reason in entering country; and,
  - Importing an alien for prostitution.

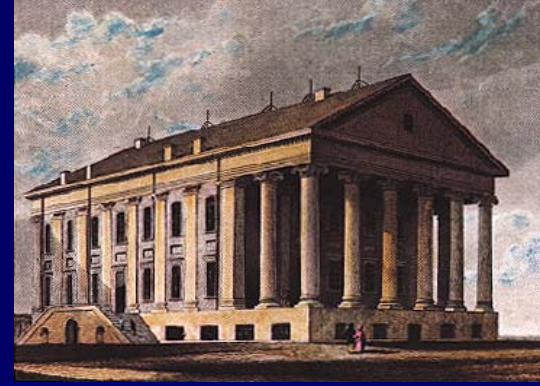
# Federal Preemption



## Aiding Illegal Immigrants

- It is also a criminal violation to assist illegal aliens in remaining in the country by:
  - Transporting an illegal alien within the country; and,
  - Concealing or harboring an illegal alien.
    - Specifically harboring for the purpose of prostitution, commercial gain, or knowing the alien will commit a crime.

# Federal Preemption



## Illegal Entrance and Departure

### ■ It is criminal violation to:

- Enter or depart in a way other than proscribed by law;
- Evade examination by immigration officers;
- Gain entrance by fraud (including false documents, sham marriage, sham business);
- Reentering after being removed; and,
- Staying in the country beyond a removal date.

- It is also an administrative violation for an alien to be present in the country in violation of law.

# Federal Preemption



## Immigration Document Fraud

- Making a false statement on a application for entrance or adjustment of status;
- Forging any document needed for entrance;
- Using or possessing any forged document; and,
- Providing a forged document to another.

# Federal Preemption



## Employment

### ■ It is illegal to:

- Hire, recruit or refer for a fee, a known illegal alien;
- Hire without complying with the Employment Verification System; and,
- Continue to employ an alien known to be illegal.

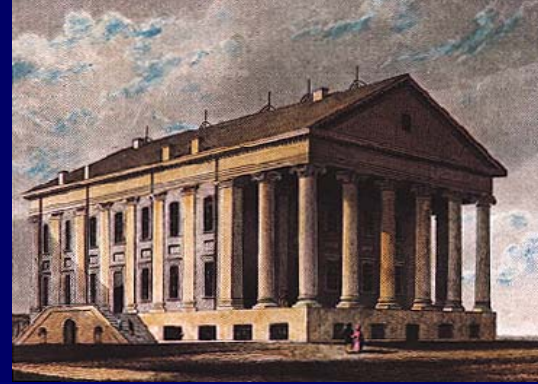
# Federal Preemption



- Article 7 of the U.S. Constitution (Supremacy Clause) makes the "Constitution, and the laws of the United States" the "supreme law of the land."
- It prevents the creation of, or "preempts," state or local laws that conflict with existing federal law.
- Regulation of immigration has been held by the U.S. Supreme Court as an exclusively federal power in DeCanas v. Bica, 424 U.S. 351 (1976).



# Federal Preemption



- However, the Supreme Court also held that states may enact immigration legislation if it passes a 3-part test (DeCanas Test).
- Three-part test:
  - Explicit or express preemption;
  - Occupation of the field ("field preemption"); or,
  - Implied conflict.

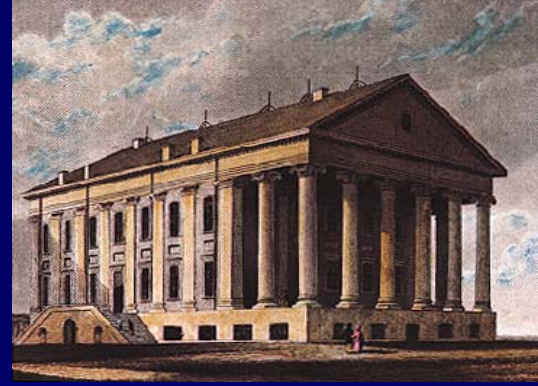


# Federal Preemption



- The DeCanas Test analyzes the following concepts:
- Does the state law regulate immigration?
  - Does the law determine who may enter the country or under what conditions may they remain, or
  - Does the regulation use federal standards?
- Was it Congress' intent to ouster state power in the area?
  - The main factors courts will at look are;
    - Is there Congressional action in the area and is that action a peripheral concern of the regulation, or
    - Has Congress clearly intended to "occupy the field."
- Does the state law conflict with or prevent an objective of the federal law?

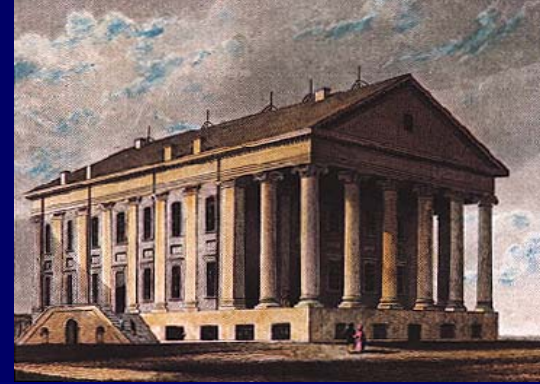
# Federal Preemption



## Express Preemption:

- States are expressly preempted from creating laws that penalize employers who hire illegal aliens. Section 1324a(h)(2) specifically states:
  - “The provisions of this section preempt any State or local law imposing civil or criminal sanctions (*other than through licensing and similar laws*) upon those who employ, or recruit or refer for a fee for employment unauthorized aliens.”

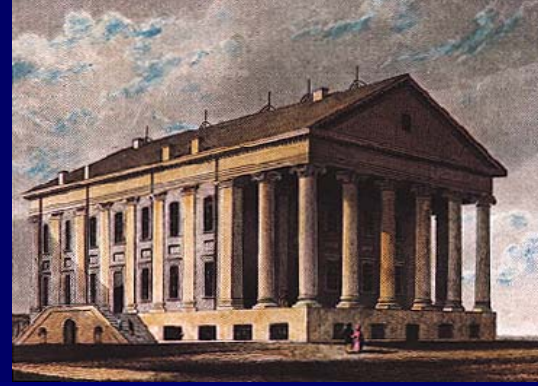
# Federal Preemption



## Law Enforcement Authority

- There are 3 U.S. Code sections that authorize state/local law enforcement to make arrests under federal criminal immigration law:
  - 8 U.S.C. §§ 1252c, 1324(c), and 1357(g).
- § 1252c allows state law enforcement officers to arrest and detain an alien who is:
  - Illegally present in the U.S;
  - Previously convicted of a felony in the U.S. and deported or left the U.S. after the conviction;
  - After obtaining confirmation from ICE; and,
  - Detention may only last as long as required to transfer the alien into Federal custody.
    - This has been adopted in Virginia by Va. Code. Ann. § 19.2-81.6.

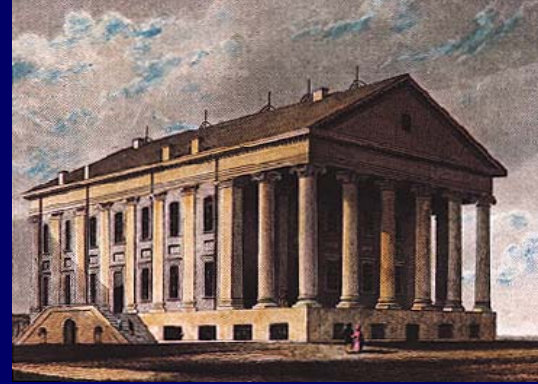
# Federal Preemption



## Law Enforcement Authority

- Section 1324(c) (anti harboring statute) permits state officers to makes arrests under that statute; and,
- Section 1357(g), also known as the “287(g)” program, provides the ability for local/state law enforcement agencies to enter into an MOU with I.C.E., to authorize designated officers to enforce immigration law.
  - A recent Opinion of the VA Attorney General’s Office concludes that, under VA law, local sheriff’s and police have the authority to enter into an MOU with ICE.

# Federal Preemption

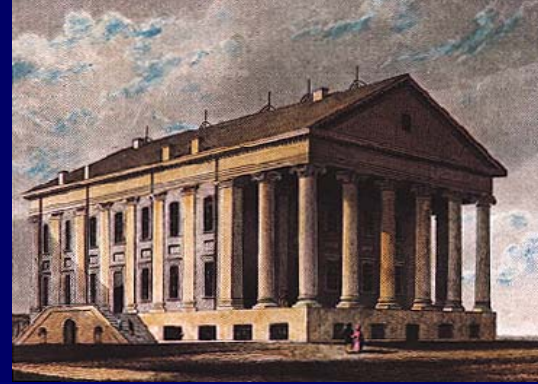


## Law Enforcement Authority

- The 4<sup>th</sup> Circuit has neither adopted or rejected the concept of “inherent authority” with regard to state enforcement immigration law.
- Gonzales v. City of Peoria (1983, 9<sup>th</sup> Cir.). Held “state law enforcement officers have authority to make arrests for federal violations ” and that general principle “extends to state enforcement of the INA as well.”
  - The court further held that state enforcement of immigration law is “limited to criminal provisions.”
- U.S. v. Salinas-Calderon (1984, 10<sup>th</sup> Cir.). Held “state law enforcement officers have the general authority to investigate and make arrests for violations of federal immigration laws” In that case a trooper pulled over a truck for driving erratically, but arrested the driver and passengers under suspicion of violating immigration laws.



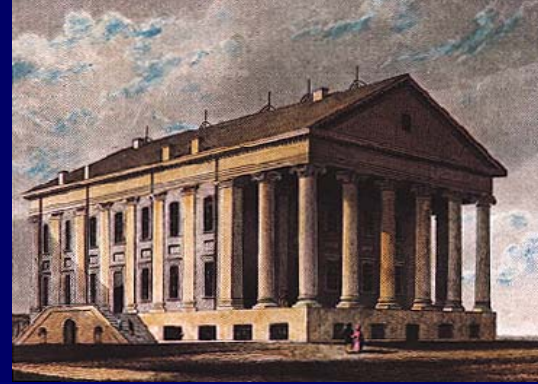
# Federal Preemption



## Law Enforcement Authority

- U.S. v. Vasquez-Alvarez (1999, 10th Cir.). Oklahoma police officer arrested suspected drug dealer for being an “illegal alien.” The court held that U.S. Code section § 1252c does not limit or displace the preexisting authority of state or local officers to investigate and make arrests of federal law, including immigration law. Instead, § 1252c merely creates an additional vehicle for the enforcement of federal immigration law.”
- U.S. v. Santanna-Garcia (2001, 10th Cir.). Utah police officer stopped a car for a traffic violation. The driver did not have a license, speak English, and admitted that he was not “legal.” The officer arrested the driver under a civil violation of immigration law. The court held the officer had the requisite probable cause to arrest the driver for violating immigration law. Under this case, it appears the 10<sup>th</sup> Circuit has extended state law enforcement authority from just criminal violations of immigration law to civil violations as well.

# Federal Preemption



## Law Enforcement Authority

- DOJ Office of Legal Counsel Memos:
  - 1996 Memo: “It is well-settled that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests.” This memo, however, limited the state law enforcement authority to criminal violations.
  - 2002 Memo: Re-affirms state law enforcement authority for criminal violations, but extends this authority to enforce civil violations as well.



# Federal Preemption



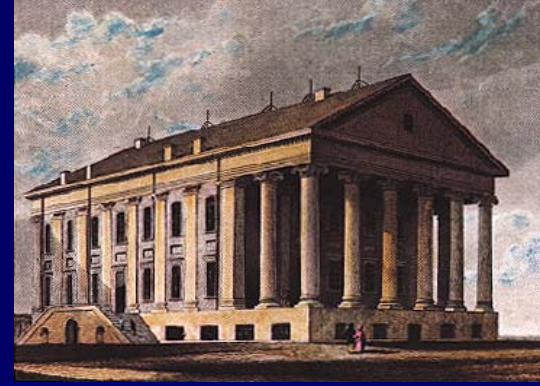
## Law Enforcement Authority

- At the request of the Task Force Co-Chairs, the Attorney General of Virginia issued an opinion regarding the authority of state and local law enforcement to make arrests for violations of immigration law:
  - Virginia law enforcement officers have the authority to arrest and detain individuals for violations of *criminal* immigration law; but,
  - There is significant ambiguity regarding the ability of state law enforcement to make arrests for *civil* violations, so it is not advisable to make arrests for civil violations until the law is clarified.



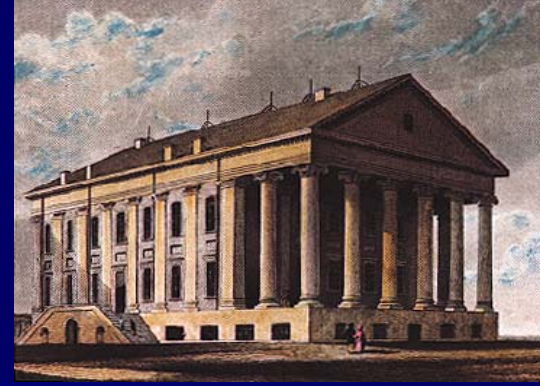
# **Task Force Recommendations**

# Proposed Recommendations



- Thirty-two proposals received.
- Categories:
  - Role of the Federal Government (1)
  - Data Collection (8)
  - Education (2)
  - Law Enforcement & Public Safety (7)
  - Agreements w/ ICE – 287(g) (4)
  - Role of Jails & Prisons (6)
  - Identification Documents (2)
  - Employment of Illegal Immigrants (1)
  - Documentation for Certain Benefits (1)

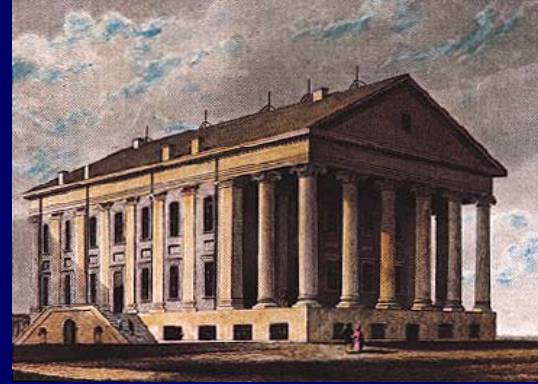
# Task Force Recommendations



- 16 proposals recommended by Task Force
- Categories:
  - Role of the Federal Government (1)
  - Data Collection (5)
  - Education (2)
  - Law Enforcement & Public Safety (2)
  - Agreements w/ ICE – 287(g) (1)
  - Role of Jails & Prisons (5)
- 3 proposals recommended to be referred to the Commission on Immigration

# Recommendation

## # 1



### ■ Resolution

- Immigration law is the responsibility of the federal gov't.,
- Federal law preempts most state measures,
- The federal gov't. has failed to address the issue, and
- The limited state and local measures that are not preempted will be of limited effect unless and until I.C.E. is provided with the resources needed to do its job.

# Recommendation # 2



## ■ Local Inmate Data System

- Include a field requiring confirmation from I.C.E. on the immigration status of any inmate who 1) was born in another country, and 2) is a citizen of another country, or for whom this information is unknown.



# Recommendation # 3



## ■ Department of Corrections

- Include a field requiring confirmation from I.C.E. on the immigration status of any inmate who 1) was born in another country, and 2) is a citizen of another country, or for whom this information is unknown.



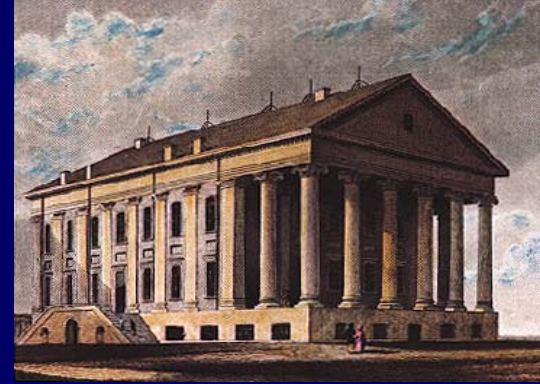
# Recommendation

## # 4



- Department of Corrections – SSN
  - DOC should verify the validity of inmates' social security numbers and omit from its records those discovered to be false.

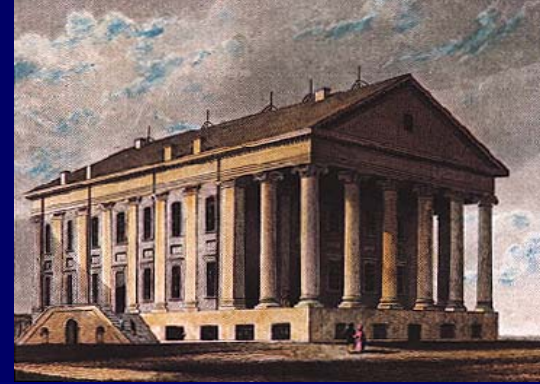
# Recommendation # 5



## ■ Data of Immigration & Customs Enforcement

- Ask I.C.E. to maintain data on:
  - The # of inquiries made by state and local law enforcement agencies to its L.E.S.C.,
  - The # of these inquiries that are found to be illegal immigrants, legal permanent residents, nonimmigrants, etc.,
  - The # of detainers issued for those found to be illegal immigrants, and
  - The # of deportations that result from the detainers issued.
- I.C.E. should provide the data to Virginia upon request.

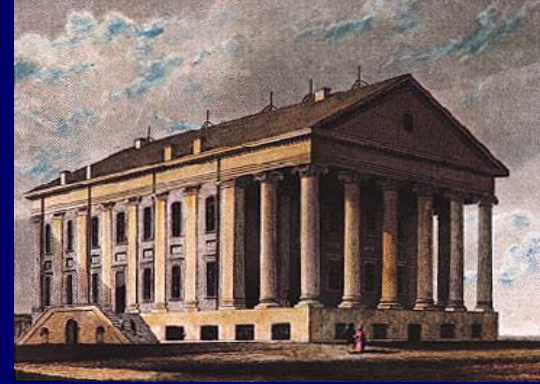
# Recommendation # 6



- Cross Check LIDS Data Against NCIC/LESC
  - The information within LIDS for all inmates currently in jails should be cross checked against the illegal immigrant databases of the NCIC and the LESC.

# Recommendation

## # 7



### ■ Bridging the Language Barrier

- Law enforcement agencies should enhance their ability to overcome language barriers with immigrant communities by arranging for law enforcement officers to be trained in different languages and cultures within their jurisdiction and by hiring more multi-lingual personnel.
- The Department of Criminal Justice Services should partner with community organizations, such as the Hispanic Chamber of Commerce, to provide language training at no cost to the officer and to explore the possibility of tuition assistance or grant opportunities for officers who seek to earn language degrees at community colleges.

# Recommendation # 8

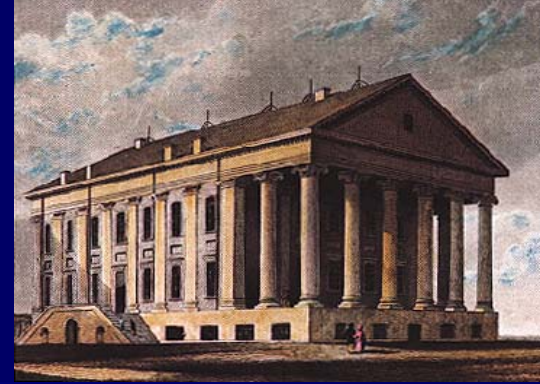


- Education for Immigrant Communities on Laws, Regulations, and Safety
  - Law enforcement agencies, state and local governmental agencies, and community organizations should work together to educate immigrant communities on laws, regulations and safety issues relevant to immigrant communities.



# Recommendation

## # 9



- Building Relationships Between Law Enforcement and Immigrant Communities
  - Law enforcement agencies should build stronger working relationships with immigrant communities by working to establish trust through crime prevention programs, neighborhood watch programs, citizen police academies, community outreach events, and community information meetings.

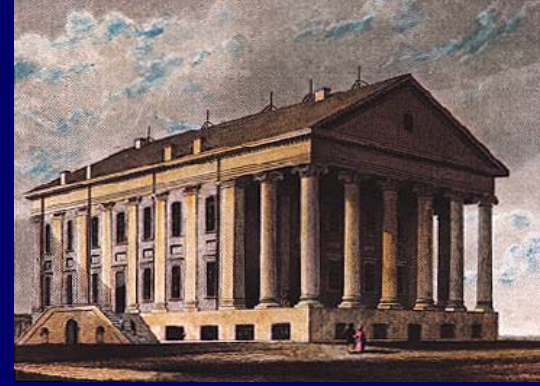


# Recommendation # 10



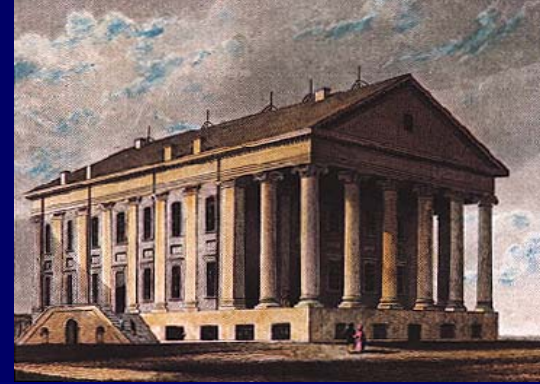
- Regional Anti-Gang Task Forces
  - It is recommended that all regions of VA that have not already done so form an anti-gang task force which should include, as a member, a representative from I.C.E.

# Recommendation # 11



- 287(g) Authorization for VSP and DOC
  - Request the Governor to execute 287(g) agreements with I.C.E. to authorize State Police and DOC to designate officers to be trained and authorized to assist federal authorities in the detection, apprehension, detention, and removal of illegal immigrants confronted in their normal criminal justice functions.
    - State Police authority would be limited to illegal immigrants confronted in the course of investigating violent felonies, drug offenses, and gang-related crime.

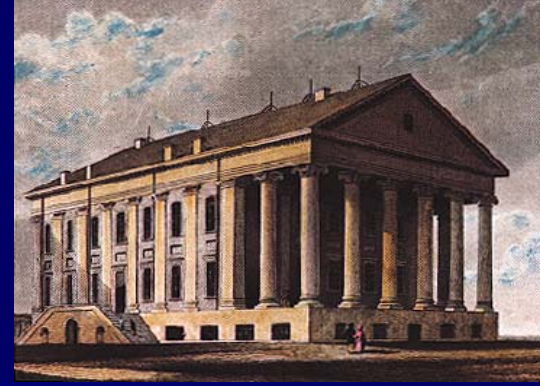
# Recommendation # 12



## ■ Offenses Triggering Response by I.C.E.

- The Crime Commission should work with I.C.E. to develop a list of offenses which, if committed by an illegal immigrant, will guarantee that I.C.E. will detain and take custody of the suspect at the time of their trial, or at the conclusion of their sentence, whichever is longer.
- If I.C.E. cannot guarantee detention and deportation of criminal illegal immigrants for all offenses that qualify under federal law, then it must advise VA of the reason(s) for that decision so that VA can evaluate any options at its disposal to facilitate deportation.

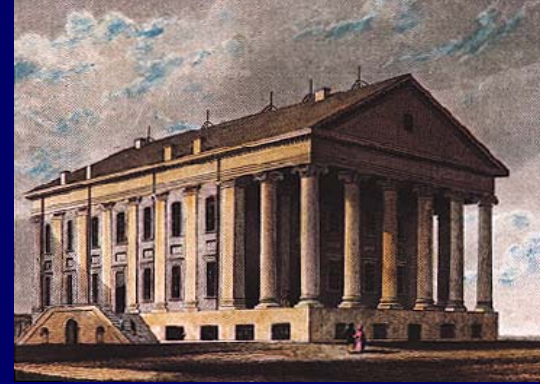
# Recommendation # 13



## ■ Presumption Against Bail

- Amend VA Code § 19.2-120 to include illegal immigrants charged with a state crime, or for whom a federal warrant is outstanding, among those for whom there exists a presumption against bail unless and until notification is received from I.C.E. that it does not plan to detain the individual. Upon such notification being received, the presumption shall no longer exist.

# Recommendation # 14



- Inquiry into Immigration Status and Reports to I.C.E.
  - Amend VA Code § 53.1-218 to require direct reporting to I.C.E.'s LESC of any inmate who 1) was born in another country, and 2) is a citizen of another country, or for whom this information is not known and, further, to require that confirmation of the inmate's immigration status be requested.
  - The jailer must inquire as to the country of birth and citizenship of every inmate.



# Recommendation # 15



- Training for Certain Jail and Prison Officers
  - Clarify the requirements of VA Code § 53.1-218 to ensure that officers responsible for intake and detention of inmates at jails and prisons receive training on the detection of illegal immigrants coming into the criminal justice system.

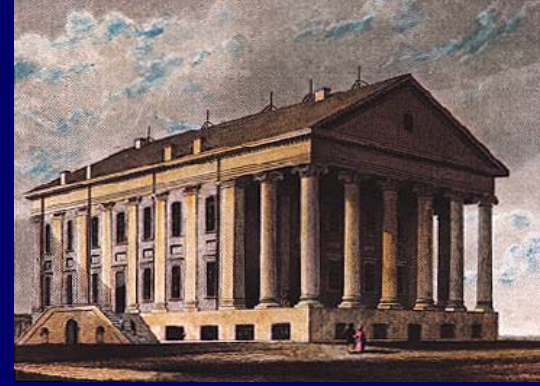


# Recommendation # 16



- Reimbursement Rates Received from I.C.E. for Use of Bed Space and Funding for Construction
  - Any sheriff or regional jail administrator who holds an illegal immigrant, nonimmigrant, or legal permanent resident on behalf of the federal government and who, in doing so, is entitled to per diem reimbursement, shall be entitled to 100% of the reimbursement received from the federal government.
  - The Commonwealth should fund new construction of extra bed space at a rate of 50%, rather than the current 25%.

# Referrals



- The following proposals were considered to be not germane to Task Force Mission and were referred to the Governor's Commission on Immigration:
  - Verification cards for the purpose of showing identity
  - Verification of new employees through the "E-Verify" program; Loss/suspension of license for knowing employment of illegal immigrants.
  - Documentation required to receive certain benefits.